

1 CABINET FOR HEALTH AND FAMILY SERVICES

2 Department for Medicaid Services

3 Commissioner's Office

4 (Amendment)

5 907 KAR 3:170. Telehealth services and reimbursement.

6 RELATES TO: KRS [~~11.550,~~] 194A.060, 125, 205.559, 205.560, 422.317, 434.840-
7 434 860, 42 C.F.R. 415.174, 415.184, 431.300-431.307, 440.50

8 STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3),
9 205.559(2), (7), 205.560

10 NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family
11 Services, Department for Medicaid Services, has responsibility to administer the
12 Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative
13 regulation, to comply with any requirement that may be imposed or opportunity
14 presented by federal law for the provision of medical assistance to Kentucky's indigent
15 citizenry. KRS 205.559 establishes the requirements regarding Medicaid
16 reimbursement of telehealth providers and KRS 205.559(2) and (7) require the cabinet
17 to promulgate an administrative regulation relating to telehealth services and
18 reimbursement. This administrative regulation establishes the coverage provisions
19 relating to telehealth services and the method of determining reimbursement for
20 services by the Department for Medicaid Services in accordance with KRS 205.559.

Section 1. Definitions. (1) “Advanced registered nurse practitioner” or “ARNP” is defined by KRS 314.011(7).

(2) “Certified nutritionist” is defined by KRS 310.005(12).

(3) “Community mental health center” or “CMHC” means a facility that provides a comprehensive range of mental health services to Medicaid recipients of a designated area in accordance with KRS 210.370 to 210.485.

(4)~~(2)~~ “Consultation” means a type of evaluation and management service as defined by the most recent edition of the Current Procedural Terminology published annually by the American Medical Association.

(5)~~(3)~~ “CPT code” means a code used for reporting procedures and services performed by physicians or other licensed medical professionals which is published annually by the American Medical Association in Current Procedural Terminology.

(6)~~(4)~~ “Department” means the Department for Medicaid Services or its designated agent.

(7) “Encounter” means one (1) visit by a recipient to a telehealth spoke site where the recipient receives a service or care, during the visit, from a provider at a telehealth hub site.

(8) “Federal financial participation” is defined in 42 CFR 400.203.

(9)~~(5)~~ “GT modifier” means a modifier that identifies a telehealth service which is approved by the healthcare common procedure coding system (HCPCS).

(10)~~(6)~~ “Health care provider” means a Medicaid-enrolled provider, in accordance with 907 KAR 1:671 and 907 KAR 1:672 who is a:

(a) Licensed physician;

(b) Licensed advanced registered nurse practitioner;

(c) Certified physician assistant working under physician supervision;

(d) Licensed dentist or oral surgeon; [or]

(e) Community mental health center;

(f) Psychologist with a license in accordance with KRS 319.010(5); or

(g) Licensed clinical social worker.

(11)[(7)] "Hub site" means a telehealth site where the telehealth provider performs
telehealth[medical specialist providing the telehealth service is located] and is
considered the place of service.

(12) "International statistical classification of disease code" or "ICD code" means
the most current code classifying a disease or wide variety of signs, symptoms,
abnormal findings, complaints, social circumstances, or external causes of injury or
disease, up to six characters long and published by the World Health Organization.

(13)[(8)] "KenPAC" means the Kentucky Patient Access and Care system.

(14)[(9)] "KenPAC PCCM" means a Medicaid provider who is enrolled as a primary
care case manager in the Kentucky Patient Access and Care System.

(15)[(10)] "Legally-authorized representative" means a Medicaid recipient's parent or
guardian if a recipient is a minor child, or a person with power of attorney for a recipient.

(16) "Licensed clinical social worker" means an individual meeting the licensure
requirements established in KRS 335.100.

(17) "Licensed dietitian" is defined by KRS 310.005(11).

(18) "Licensed marriage and family therapist" is defined by KRS 335.300(3).

(19) "Licensed professional clinical counselor" is defined by KRS 335.500(3).

(20)[(11)] "Medical necessity" or "medically necessary" means a covered benefit is
determined to be needed in accordance with 907 KAR 3:130.

1 (21) "Occupational therapist" is defined by KRS 319A.010(3).

2 (22) "Physical therapist" is defined by KRS 327.010(2).

3 (23) "Physician" is defined by KRS 311.550(12).

4 (24) "Psychiatric medical resident" means an individual who:

5 (a) Possesses a special faculty license in accordance with KRS 311.550(29);

6 (b) Meets the qualification for licensure requirements established in KRS 311.571(1)

7 or (2); and

8 (c) Is a resident as defined by 42 CFR 415.152.

9 (25) "Psychiatric registered nurse" means a registered nurse who:

10 (a) Has a master of science in nursing with a specialty in psychiatric or mental health
11 nursing;

12 (b) Has a bachelor of science in nursing and at least one (1) year of experience in a
13 mental health setting;

14 (c) Is a graduate (possesses of a diploma) of a three (3)-year educational program
15 and has at least two (2) years of experience in a mental health setting;

16 (d) Has an associate degree in nursing and at least three (3) years of experience in a
17 mental health setting; or

18 (e) Has any level of education with American Nursing Association (ANA) certification
19 as a psychiatric or mental health nurse.

20 (26) "Psychologist" is defined by KRS 319.010(8).

21 (27) "Registered nurse" is defined by KRS 314.011(5).

22 (28) "Speech-language pathologist" is defined by KRS 334A.020(3).

23 ~~(29)[(12) "Medical specialist" means a physician specialist, an oral surgeon, or a~~
24 ~~CMHC as specified in Section 4(1) of this administrative regulation.~~

1 ~~(13)~~] "Spoke site" means a telehealth site where the recipient receiving the telehealth
2 service is located.

3 (30) "Telehealth provider" means a Medicaid-enrolled provider, in accordance with
4 907 KAR 1:671 and 907 KAR 1:672, providing telehealth at a hub site.

5 ~~(31)~~~~(14)~~] "Telehealth service" means a medical service provided through advanced
6 telecommunications technology from a hub site to a recipient at a spoke site.

7 ~~(32)~~~~(15)~~] "Telehealth site" means a hub site or spoke site that has been approved as
8 part of a telehealth network established in accordance with KRS 194A.125~~[41-550]~~.

9 (33) "Telepresenter" means an individual operating telehealth equipment at a spoke
10 site to enable a recipient to receive a telehealth service.

11 ~~(34)~~~~(16)~~] "Transmission cost" means the cost of the telephone line and related costs
12 incurred during the time of the transmission of a telehealth service.

13 ~~(35)~~~~(17)~~] "Two (2) way interactive video" means a type of advanced
14 telecommunications technology that permits a real time service to take place between a
15 recipient and a telepresenter at the spoke site and a telehealth provider~~[medical~~
16 ~~specialist]~~ at the hub site.

17 Section 2. Telehealth Coverage For Telehealth Not Provided in a Community Mental
18 Health Center. (1) The department shall reimburse for the following telehealth activity
19 not provided via a community mental health center in accordance with the following
20 provisions:

21 (a) Wound care with a CPT code of 97601 or 97602 provided by a physician or
22 advanced registered nurse practitioner;

23 (b) A service, provided by a physician or ARNP, which has an evaluation and
24 management code of 99201 through 99215; and

1 (c) A service, provided by a physician or ARNP, with an evaluation and management
2 code of 99241 through 99255;

3 (d) A psychiatric diagnosis or evaluation interview with a CPT code of 90801 through
4 90802 if provided by:

5 1. A psychiatrist;

6 2. A licensed clinical social worker directly employed by a psychiatrist if the
7 psychiatrist also interacts with the recipient during the telehealth encounter;

8 3. A psychologist with a license in accordance with KRS 319.010(5) and a doctorate
9 degree in psychology directly employed by a psychiatrist if the psychiatrist also interacts
10 with the recipient during the telehealth encounter;

11 4. A licensed professional clinical counselor directly employed by a psychiatrist if the
12 psychiatrist also interacts with the recipient during the telehealth encounter;

13 5. A licensed marriage and family therapist directly employed by a psychiatrist if the
14 psychiatrist also interacts with the recipient during the telehealth encounter;

15 6. A physician; or

16 7. An ARNP;

17 (e) Outpatient individual psychotherapy with a CPT code of 90804 through 90809 if
18 provided by:

19 1. A psychiatrist;

20 2. A licensed clinical social worker directly employed by a psychiatrist if the
21 psychiatrist also interacts with the recipient during the telehealth encounter;

22 3. A psychologist with a license in accordance with KRS 319.010(5) and a doctorate
23 degree in psychology directly employed by a psychiatrist if the psychiatrist also interacts
24 with the recipient during the telehealth encounter;

1 4. A licensed professional clinical counselor directly employed by a psychiatrist if the
2 psychiatrist also interacts with the recipient during the telehealth encounter;

3 5. A licensed marriage and family therapist directly employed by a psychiatrist if the
4 psychiatrist also interacts with the recipient during the telehealth encounter;

5 6. A physician not to exceed four (4) encounters per recipient per year; or

6 7. An ARNP not to exceed four (4) encounters per recipient per year;

7 (f) Outpatient individual interactive psychotherapy with a CPT code of 90810 through
8 90815 if provided by:

9 1. A psychiatrist;

10 2. A licensed clinical social worker directly employed by a psychiatrist if the
11 psychiatrist also interacts with the recipient during the telehealth encounter;

12 3. A psychologist with a license in accordance with KRS 319.010(5) and a doctorate
13 degree in psychology directly employed by a psychiatrist if the psychiatrist also interacts
14 with the recipient during the telehealth encounter;

15 4. A licensed professional clinical counselor directly employed by a psychiatrist if the
16 psychiatrist also interacts with the recipient during the telehealth encounter;

17 5. A licensed marriage and family therapist directly employed by a psychiatrist if the
18 psychiatrist also interacts with the recipient during the telehealth encounter;

19 6. A physician not to exceed four (4) encounters per recipient per year; or

20 7. An ARNP not to exceed four (4) encounters per recipient per year;

21 (g) Inpatient individual psychotherapy with a CPT code of 90816 through 90822 if
22 provided by:

23 1. A psychiatrist;

24 2. A licensed clinical social worker directly employed by a psychiatrist if the

psychiatrist also interacts with the recipient during the telehealth encounter;

3. A psychologist with a license in accordance with KRS 319.010(5) and a doctorate degree in psychology directly employed by a psychiatrist if the psychiatrist also interacts with the recipient during the telehealth encounter;

4. A licensed professional clinical counselor directly employed by a psychiatrist if the psychiatrist also interacts with the recipient during the telehealth encounter;

5. A licensed marriage and family therapist directly employed by a psychiatrist if the psychiatrist also interacts with the recipient during the telehealth encounter;

6. A physician not to exceed four (4) encounters per recipient per year; or

7. An ARNP not to exceed four (4) encounters per recipient per year;

(h) Inpatient individual interactive psychotherapy with a CPT code of 90823 through 90829 if provided by:

1. A psychiatrist;

2. A licensed clinical social worker directly employed by a psychiatrist if the psychiatrist also interacts with the recipient during the telehealth encounter;

3. A psychologist with a license in accordance with KRS 319.010(5) and a doctorate degree in psychology directly employed by a psychiatrist if the psychiatrist also interacts with the recipient during the telehealth encounter;

4. A licensed professional clinical counselor directly employed by a psychiatrist if the psychiatrist also interacts with the recipient during the telehealth encounter;

5. A licensed marriage and family therapist directly employed by a psychiatrist if the psychiatrist also interacts with the recipient during the telehealth encounter;

6. A physician not to exceed four (4) encounters per recipient per year; or

7. An ARNP not to exceed four (4) encounters per recipient per year;

1 (i) Other psychotherapy with a CPT code of 90845 through 90846 if provided by:

2 1. A psychiatrist;

3 2. A licensed clinical social worker directly employed by a psychiatrist if the
4 psychiatrist also interacts with the recipient during the telehealth encounter;

5 3. A psychologist with a license in accordance with KRS 319.010(5) and a doctorate
6 degree in psychology directly employed by a psychiatrist if the psychiatrist also interacts
7 with the recipient during the telehealth encounter;

8 4. A licensed professional clinical counselor directly employed by a psychiatrist if the
9 psychiatrist also interacts with the recipient during the telehealth encounter;

10 5. A licensed marriage and family therapist directly employed by a psychiatrist if the
11 psychiatrist also interacts with the recipient during the telehealth encounter;

12 6. A physician not to exceed four (4) encounters per recipient per year; or

13 7. An ARNP not to exceed four (4) encounters per recipient per year;

14 (j) Family therapy with a CPT code of 90847 if provided by:

15 1. A psychiatrist;

16 2. A licensed clinical social worker directly employed by a psychiatrist if the
17 psychiatrist also interacts with the recipient during the telehealth encounter;

18 3. A psychologist with a license in accordance with KRS 319.010(5) and a doctorate
19 degree in psychology directly employed by a psychiatrist if the psychiatrist also interacts
20 with the recipient during the telehealth encounter;

21 4. A licensed professional clinical counselor directly employed by a psychiatrist if the
22 psychiatrist also interacts with the recipient during the telehealth encounter;

23 5. A licensed marriage and family therapist directly employed by a psychiatrist if the
24 psychiatrist also interacts with the recipient during the telehealth encounter;

1 6. A physician not to exceed four (4) encounters per recipient per year; or

2 7. An ARNP not to exceed four (4) encounters per recipient per year;

3 (k) Family or group psychotherapy with a CPT code of 90849 through 90857 if
4 provided by:

5 1. A psychiatrist;

6 2. A licensed clinical social worker directly employed by a psychiatrist if the
7 psychiatrist also interacts with the recipient during the telehealth encounter;

8 3. A psychologist with a license in accordance with KRS 319.010(5) and a doctorate
9 degree in psychology directly employed by a psychiatrist if the psychiatrist also interacts
10 with the recipient during the telehealth encounter;

11 4. A licensed professional clinical counselor directly employed by a psychiatrist if the
12 psychiatrist also interacts with the recipient during the telehealth encounter;

13 5. A licensed marriage and family therapist directly employed by a psychiatrist if the
14 psychiatrist also interacts with the recipient during the telehealth encounter;

15 6. A physician not to exceed four (4) encounters per recipient per year; or

16 7. An ARNP not to exceed four (4) encounters per recipient per year;

17 (l) Psychiatric medication management with a CPT code of 90862 if provided by:

18 1. A psychiatrist;

19 2. A physician not to exceed four (4) encounters per recipient per year; or

20 3. An ARNP not to exceed four (4) encounters per recipient per year;

21 (m) Interpretation of data to family or others with a CPT code of 90887 if provided by:

22 1. A psychiatrist;

23 2. A physician not to exceed four (4) encounters per recipient per year; or

24 3. An ARNP not to exceed four (4) encounters per recipient per year;

1 (n) A dialysis related service with a CPT code of 90918 through 90925 if provided by
2 a physician;

3 (o) Initial visit with a CPT code of 99304 through 99305 to a new or established
4 patient in a nursing home if provided by a physician or ARNP;

5 (p) Subsequent visit with a CPT code of 99308 through 99310 to a patient in a
6 nursing home if provided by a physician or ARNP;

7 (q) Discharge of a patient from a nursing home with a CPT code of 99315 if provided
8 by a physician or ARNP;

9 (r) Speech therapy evaluation with a CPT code of 92056 if provided by a speech-
10 language pathologist;

11 (s) Speech therapy treatment with a CPT code of 92057 if provided by a speech-
12 language pathologist;

13 (t) Occupational therapy with a CPT code of 97001 if provided by an occupational
14 therapist;

15 (u) Physical therapy with a CPT code of 97004 if provided by a physical therapist;

16 (v) Individual medical nutrition therapy with a CPT code of G0270 or 97802 through
17 97804 if provided by a licensed dietitian or certified nutritionist;

18 (w) End stage renal disease services with a CPT code of G0308, G0309, G0311,
19 G0314, G0315, G0317, or G0318 if provided by a physician or ARNP; or

20 (x) A neurobehavioral status exam with a CPT code of 96116 if provided by:

21 1. A psychiatrist;

22 2. A licensed clinical social worker directly employed by a psychiatrist if the
23 psychiatrist also interacts with the recipient during the telehealth encounter;

24 3. A psychologist with a license in accordance with KRS 319.010(5) and a doctorate

degree in psychology directly employed by a psychiatrist if the psychiatrist also interacts with the recipient during the telehealth encounter;

4. A licensed professional clinical counselor directly employed by a psychiatrist if the psychiatrist also interacts with the recipient during the telehealth encounter;

5. A licensed marriage and family therapist directly employed by a psychiatrist if the psychiatrist also interacts with the recipient during the telehealth encounter;

6. A physician not to exceed four (4) encounters per recipient per year; or

7. An ARNP not to exceed four (4) encounters per recipient per year.

(2) The department shall not reimburse for a telehealth service if the service is not medically necessary.

(3) The department shall not reimburse for a service via this administrative regulation if the service requires a face-to-face contact with a recipient in accordance with 42 CFR 447.371.

(4) A telehealth service shall require:

(a) The use of two (2) way interactive video;

(b) A referral by a health care provider;

(c) A referral by a recipient's KenPAC PCCM if the comparable nontelehealth service requires a KenPAC PCCM referral; and

(d) A referral by a recipient's lock-in provider if the recipient is locked-in pursuant to 42 C.F.R. 431.54 and 907 KAR 1:677.

Section 3. Coverage of Telehealth Provided by a Community Mental Health Center.

(1) The department shall reimburse for the following telehealth activity provided via a community mental health center in accordance with the following provisions:

(a) A psychiatric diagnosis or evaluation interview with a CPT code of 90801 through

90802 if provided by:

1. A psychiatrist;

2. A physician;

3. A psychologist with a license in accordance with KRS 319.010(5);

4. A licensed marriage and family therapist;

5. A licensed professional clinical counselor;

6. A psychiatric medical resident;

7. A psychiatric registered nurse;

8. A licensed clinical social worker; or

9. An advanced registered nurse practitioner;

(b) Outpatient individual psychotherapy with a CPT code of 90804 through 90809 if

provided by:

1. A psychiatrist;

2. A physician;

3. A psychologist with a license in accordance with KRS 319.010(5);

4. A licensed marriage and family therapist;

5. A licensed professional clinical counselor;

6. A psychiatric medical resident;

7. A psychiatric registered nurse;

8. A licensed clinical social worker; or

9. An advanced registered nurse practitioner;

(c) Outpatient individual interactive psychotherapy with a CPT code of 90810 through

90815 if provided by:

1. A psychiatrist;

1 2. A physician;

2 3. A psychologist with a license in accordance with KRS 319.010(5);

3 4. A licensed marriage and family therapist;

4 5. A licensed professional clinical counselor;

5 6. A psychiatric medical resident;

6 7. A psychiatric registered nurse;

7 8. A licensed clinical social worker; or

8 9. An advanced registered nurse practitioner;

9 (d) Inpatient individual psychotherapy with a CPT code of 90816 through 90822 if
10 provided by:

11 1. A psychiatrist;

12 2. A physician;

13 3. A psychologist with a license in accordance with KRS 319.010(5);

14 4. A licensed marriage and family therapist;

15 5. A licensed professional clinical counselor;

16 6. A psychiatric medical resident;

17 7. A psychiatric registered nurse;

18 8. A licensed clinical social worker; or

19 9. An advanced registered nurse practitioner;

20 (e) Inpatient individual interactive psychotherapy with a CPT code of 90823 through
21 90829 if provided by:

22 1. A psychiatrist;

23 2. A physician;

24 3. A psychologist with a license in accordance with KRS 319.010(5);

1 4. A licensed marriage and family therapist;

2 5. A licensed professional clinical counselor;

3 6. A psychiatric medical resident;

4 7. A psychiatric registered nurse;

5 8. A licensed clinical social worker; or

6 9. An advanced registered nurse practitioner;

7 (f) Other psychotherapy with a CPT code of 90845 through 90846 if provided by:

8 1. A psychiatrist;

9 2. A physician;

10 3. A psychologist with a license in accordance with KRS 319.010(5);

11 4. A licensed marriage and family therapist;

12 5. A licensed professional clinical counselor;

13 6. A psychiatric medical resident;

14 7. A psychiatric registered nurse;

15 8. A licensed clinical social worker; or

16 9. An advanced registered nurse practitioner;

17 (g) Family therapy with a CPT code of 90847 if provided by:

18 1. A psychiatrist;

19 2. A physician;

20 3. A psychologist with a license in accordance with KRS 319.010(5);

21 4. A licensed marriage and family therapist;

22 5. A licensed professional clinical counselor;

23 6. A psychiatric medical resident;

24 7. A psychiatric registered nurse;

1 8. A licensed clinical social worker; or

2 9. An advanced registered nurse practitioner;

3 (h) Family or group psychotherapy with a CPT code of 90849 through 90857 if
4 provided by:

5 1. A psychiatrist;

6 2. A physician;

7 3. A psychologist with a license in accordance with KRS 319.010(5);

8 4. A licensed marriage and family therapist;

9 5. A licensed professional clinical counselor;

10 6. A psychiatric medical resident;

11 7. A psychiatric registered nurse;

12 8. A licensed clinical social worker; or

13 9. An advanced registered nurse practitioner;

14 (i) Psychiatric medication management with a CPT code of 90862 if provided by:

15 1. A psychiatrist;

16 2. A physician;

17 3. A psychiatric medical resident; or

18 4. An ARNP;

19 (j) Interpretation of data to family or others with a CPT code of 90887 if provided by:

20 1. A psychiatrist;

21 2. A physician; or

22 3. An ARNP; or

23 (k) A neurobehavioral status exam with a CPT code of 96116 if provided by:

24 1. A psychiatrist; or

1 2. A psychologist with a license in accordance with KRS 319.010(5).

2 (2) The department shall not reimburse for a telehealth service if the service is not
3 medically necessary.

4 (3) The department shall not reimburse for a service via this administrative regulation
5 if the service requires a face-to-face contact with a recipient in accordance with 42 CFR
6 447.371.

7 (4) A telehealth service shall require:

8 (a) The use of two (2) way interactive video;

9 (b) A referral by a health care provider;

10 (c) A referral by a recipient's KenPAC PCCM if the comparable nontelehealth service
11 requires a KenPAC PCCM referral; and

12 (d) A referral by a recipient's lock-in provider if the recipient is locked-in pursuant to
13 42 C.F.R. 431.54 and 907 KAR 1:677.

14 ~~Section 4.[Section 2. Covered Services. (1) Except as restricted in accordance with~~
15 ~~Section 3 of this administrative regulation, a telehealth service shall be covered if~~
16 ~~medically necessary.~~

17 ~~(2) A telehealth service shall require:~~

18 ~~(a) The use of two (2) way interactive video;~~

19 ~~(b) A referral by a health care provider specified in Section 4(2) of this administrative~~
20 ~~regulation;~~

21 ~~(c) A referral by a recipient's KenPAC PCCM if the comparable nontelehealth service~~
22 ~~requires a KenPAC PCCM referral; and~~

23 ~~(d) A referral by a recipient's lock-in provider if the recipient is locked-in pursuant to~~
24 ~~42 C.F.R. 431.54 and 907 KAR 1:677.~~

~~Section 3. Limitations. (1) Coverage of telehealth services for a non-CMHC shall be limited to a maximum of four (4) telehealth services per recipient per year if provided as follows:~~

~~(a) For a recipient age twenty one (21) years and older, the evaluation and management consultation CPT codes 99241 through 99275 may be billed as a telehealth service if provided by a medical specialist specified in Section 4(1) of this administrative regulation; or~~

~~(b) For a recipient under the age of twenty one (21) years:~~

~~1. The evaluation and management consultation CPT codes 99241 through 99275 may be billed as a telehealth service if provided by a medical specialist specified in Section 4(1) of this administrative regulation; and~~

~~2. Psychiatric diagnostic evaluation CPT code 90801 and individual psychotherapy CPT codes 90804 through 90809 may be billed as a telehealth service if provided by a psychiatrist.~~

~~(2) Coverage for a telehealth service for a licensed CMHC shall be limited to twelve (12) psychiatric services per recipient per year and shall be billed using the following diagnostic CPT service codes:~~

~~(a) 90801 for a diagnostic interview examination;~~

~~(b) 90862 for medication management;~~

~~(c) 90887 for an outpatient collateral;~~

~~(d) 90804 for an individual psychotherapy; or~~

~~(e) 90847 for an outpatient family therapy.~~

~~(3) Coverage shall not be provided for a service that requires face to face contact with a recipient in accordance with 42 C.F.R. 447.371.~~

Section 4. ~~Eligible Providers. (1) A medical specialist at a hub site shall be enrolled as a Medicaid provider pursuant to 907 KAR 1:671 and 907 KAR 1:672 and shall be:~~

~~(a) For a provider that is not a community mental health center, a licensed physician in one (1) of the following specialties or subspecialties:~~

~~1. Dermatology;~~

~~2. Emergency medicine;~~

~~3. An internal medicine subspecialty;~~

~~4. General surgery or a surgery subspecialty;~~

~~5. Neurology;~~

~~6. Obstetrics and gynecology;~~

~~7. A pediatric subspecialty;~~

~~8. Psychiatry;~~

~~9. Radiology or radiation medicine; or~~

~~10. A licensed oral surgeon; or~~

~~(b) For a CMHC:~~

~~1. A psychiatrist; or~~

~~2. An advanced registered nurse practitioner.~~

~~(2) A health care provider requesting a telehealth service shall be an enrolled Medicaid provider who is a:~~

~~(a) Licensed physician;~~

~~(b) Licensed advanced registered nurse practitioner;~~

~~(c) Certified physician assistant working under physician supervision;~~

~~(d) Licensed dentist or oral surgeon; or~~

~~(e) CMHC.~~

~~Section 5.~~ Reimbursement. (1) The department shall reimburse a telehealth provider~~[medical specialist located at a hub site]~~ for a telehealth service:

(a) Except for a service provided by an ARNP or CMHC, an amount equal to the amount paid for a comparable in-person service in accordance with 907 KAR 3:010; ~~or~~

(b) If a CMHC, in accordance with 907 KAR 1:045; or

(c) An amount equal to the amount paid for a comparable in-person service in accordance with 907 KAR 1:104 if provided by an ARNP.

(2) A telehealth provider~~[medical specialist]~~ shall bill for a service using the appropriate evaluation and management CPT code or ICD code as specified in Section 2 or 3 of this administrative regulation along with the corresponding ~~[with the addition of the]~~ two (2) letter "GT" modifier.

(3) The department shall not require the presence of a health care provider requesting a telehealth service at the time of the telehealth service unless it is requested by a telehealth provider~~[medical specialist]~~ at the hub site.

(4) The department shall not reimburse~~[Reimbursement shall not be made]~~ for transmission costs.

Section 5~~[6]~~ Confidentiality and Data Integrity.

(1) A telehealth service shall be performed on a secure telecommunications line or utilize a method of encryption adequate to protect the confidentiality and integrity of the telehealth service information.

(2) Both a hub site and a spoke site shall use authentication and identification to ensure the confidentiality of a telehealth service.

(3) A provider of a telehealth service shall implement confidentiality protocols that include:

- (a) Identifying personnel who have access to a telehealth transmission;
 - (b) Usage of unique passwords or identifiers for each employee or person with access to a telehealth transmission; and
 - (c) Preventing unauthorized access to a telehealth transmission.
- (4) A provider's protocols and guidelines shall be available for inspection by the department upon request.

Section 6.~~[7.]~~ Informed Consent. (1) Before providing a telehealth service to a recipient, a health care provider shall document written informed consent from the recipient and shall ensure that the following written information is provided to the recipient in a format and manner that the recipient is able to understand:

(a) The recipient shall have the option to refuse the telehealth service at any time without affecting the right to future care or treatment and without risking the loss or withdrawal of a Medicaid benefit to which the recipient is entitled;

(b) The recipient shall be informed of alternatives to the telehealth service that are available to the recipient;

(c) The recipient shall have access to medical information resulting from the telehealth service as provided by law;

(d) The dissemination, storage, or retention of an identifiable recipient image or other information from the telehealth service shall not occur without the written informed consent of the recipient or the recipient's legally-authorized representative;

(e) The recipient shall have the right to be informed of the parties who will be present at the spoke site and the hub site during the telehealth service and shall have the right to exclude anyone from either site; and

(f) The recipient shall have the right to object to the video taping of a telehealth

1 service.

2 (2) A copy of the signed informed consent shall be retained in the recipient's medical
3 record and provided to the recipient or the recipient's legally-authorized representative
4 upon request.

5 (3) The requirement to obtain informed consent before providing a service shall not
6 apply to an emergency situation if the recipient is unable to provide informed consent
7 and the recipient's legally-authorized representative is unavailable.

8 Section ~~7~~^[8.] Medical Records. (1) A request for a telehealth service from a
9 ~~[physician or other]~~ health care provider ~~[specified in Section 4(2) of this administrative~~
10 ~~regulation]~~ and the medical necessity for the telehealth service shall be documented in
11 the recipient's medical record.

12 (2) A health care provider shall keep a complete medical record of a telehealth
13 service provided to a recipient and follow applicable state and federal statutes and
14 regulations for medical recordkeeping and confidentiality in accordance with KRS
15 194A.060, 422.317, 434.840 - 434.860, and 42 C.F.R. 431.300 to 431.307.

16 (3) A medical record of a telehealth service shall be maintained in compliance with
17 907 KAR 1:672.

18 (4) Documentation of a telehealth service by the referring health care provider shall
19 be included in the recipient's medical record and shall include:

20 (a) The diagnosis and treatment plan resulting from the telehealth service and a
21 progress note by the referring health care provider if present at the spoke site during the
22 telehealth service;

23 (b) The location of the hub site and spoke site;

24 (c) A copy of the signed informed consent form; and

(d) Documentation supporting the medical necessity of the telehealth service.

(5)(a) A telehealth provider's~~[A medical specialist's]~~ diagnosis and recommendations resulting from a telehealth service shall be documented in the recipient's medical record at the recipient's location.

(b) A telehealth provider~~[The medical specialist]~~ shall send a written report regarding a telehealth service to the referring health care provider.

Section 8. Federal Financial Participation. A provision established in this administrative regulation shall be effective contingent upon the department's receipt of federal financial participation for the respective provision.

Section 9.~~[Section 9. School-based Telehealth. (1) The provisions of this section shall apply only upon approval of a school-based telehealth program by the Telehealth Board established in KRS 11.550.~~

~~(2) Effective through October 31, 2007, the department shall cover a primary care telehealth service delivered by a hub site identified in subsection (3) of this section to a public school spoke site identified in subsection (4) of this section.~~

~~(3) The following facilities shall be designated as a hub site for the purposes of this section:~~

~~(a) St. Claire Regional Medical Center and its community primary care clinics;~~

~~(b) Glasgow Family Practice Residency Program; and~~

~~(c) Lewis County Primary Care Center.~~

~~(4) The following public schools shall be designated as a spoke site for the purposes of this section:~~

~~(a) Bath County Middle School;~~

~~(b) Botts Elementary School;~~

- ~~(c) Olive Hill Elementary School;~~
- ~~(d) Rowan County High School;~~
- ~~(e) Rowan County Middle School;~~
- ~~(f) Clearfield Elementary School;~~
- ~~(g) McBrayer Elementary School;~~
- ~~(h) Rodburn Elementary School;~~
- ~~(i) Tilden Hogge Elementary School;~~
- ~~(j) North Metcalf County Elementary School;~~
- ~~(k) Lewis County Middle School;~~
- ~~(l) Garrison Elementary School;~~
- ~~(m) Laurel Elementary School; and~~
- ~~(n) Tollesboro Elementary School.~~

~~(5) Coverage of a primary care telehealth service delivered by a hub site identified in subsection (3) of this section to a public school spoke site identified in subsection (4) of this section shall be billed using the following CPT codes for the following corresponding services:~~

- ~~(a) 99201 through 99205 for new patient office visits;~~
- ~~(b) 99211 through 99215 for established patient office visits; or~~
- ~~(c) 99241 through 99245 for consultation office visits.~~

~~(6) The department shall reimburse a primary care telehealth service provided to a public school spoke site at the same rate as a face-to-face consultation.~~

~~(7) Total aggregate reimbursement under the telehealth school-based program shall not exceed \$100,000 per calendar year.~~

1 ~~(8) The department shall not cover a consultation provided by a site not within the~~
2 ~~telehealth network pursuant to KRS 304.17A-138(1)(a).~~

3 ~~Section 10.]~~ Appeal Rights. (1) An appeal of a department determination regarding a
4 Medicaid beneficiary shall be in accordance with 907 KAR 1:563.

5 (2) An appeal of a department determination regarding Medicaid eligibility of an
6 individual shall be in accordance with 907 KAR 1:560.

7 (3) A provider may appeal a department written determination ~~[decision]~~ as to the
8 application of this administrative regulation in accordance with 907 KAR 1:671.

907 KAR 3:170

REVIEWED:

Date

Elizabeth A. Johnson, Commissioner
Department for Medicaid Services

APPROVED:

Date

Janie Miller, Secretary
Cabinet for Health and Family Services

A public hearing on this administrative regulation shall, if requested, be held on February 23, 2009 at 9:00 a.m. in the Cabinet for Health and Family Services, Health Services Board Room, 275 East Main Street; Frankfort, Kentucky; 40621. Individuals interested in attending this hearing shall notify this agency in writing by February 16, 2009, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business March 2, 2009. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5W-B, Frankfort, KY 40601, (502) 564-7905, Fax: (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Administrative Regulation #: 907 KAR 3:170
Cabinet for Health and Family Services
Department for Medicaid Services
Agency Contact Person: Stuart Owen (502) 564-4321

- (1) Provide a brief summary of:
 - (a) What this administrative regulation does: This administrative regulation establishes Department for Medicaid Services (DMS) provisions relating to telehealth.
 - (b) The necessity of this administrative regulation: This administrative regulation is necessary to establish DMS provisions relating to telehealth in accordance with KRS 194A.125 and KRS 205.559.
 - (c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing DMS telehealth provisions.
 - (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing DMS telehealth provisions.
- (2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
 - (a) How the amendment will change this existing administrative regulation: The amendment expands the amount and type of care that can be provided via telehealth; expands the eligible telehealth provider types; establishes that policies are contingent upon the provision of federal financial participation to the department, and deletes the school-based telehealth provisions as they expired October 31, 2007.
 - (b) The necessity of the amendment to this administrative regulation: The amendment is necessary to enhance recipient access to care as well as to enable DMS to enhance efficiency of care. DMS's coverage of telehealth prior to this was limited to the point that it did not encourage potential providers to invest in the required technology in order to provide telehealth. The department believes that expanded telehealth coverage, particularly among specialists, will result in recipients receiving accurate diagnoses and corresponding appropriate care sooner in some circumstances. For example, an individual with a dermatological condition in a rural area might repeatedly go to a general provider without being diagnosed accurately. If the individual can be evaluated by a dermatological specialists via telehealth, he or she, could be accurately diagnoses during one encounter. Consequently, emergency room utilization could decrease if individuals are accurately diagnosed, in some circumstances, sooner. Additionally, the enhanced availability of telehealth could potentially reduce transportation costs. The amendment establishing that provisions are

effective contingent upon the provision of federal financial participation is necessary to maintain the viability of the Medicaid program as the Centers for Medicare and Medicaid Services (CMS) provides approximately seventy (70) percent of DMS program funding.

- (c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes - including KRS 194A.125, 194A.030(1) and KRS 205.559 - by enhancing recipient access to telehealth care and improving the health of Kentuckians including the delivery of "health services in a safe and effective fashion."
 - (d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the authorizing statutes - including KRS 194A.125, 194A.030(1) and KRS 205.559 - by enhancing recipient access to telehealth care and improving the health of Kentuckians including the delivery of "health services in a safe and effective fashion."
- (3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: There are currently forty-eight (48) telehealth sites in the Kentucky telehealth network located among thirty-one (31) counties. The provider network is primarily comprised of hospitals/medical centers but also includes health departments and physicians' offices among others.
- (4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
- (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The amendment expands telehealth options and does not require new actions of compliance from regulated entities.
 - (b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). The amendment expands telehealth options and does not impose cost on regulated entities.
 - (c) As a result of compliance, what benefits will accrue to the entities identified in question (3). DMS anticipates that recipients will have enhanced access to care (including specialty care such as dermatology) and that telehealth providers will have expanded opportunity to perform telehealth as a result of the amendment.
- (5) Provide an estimate of how much it will cost to implement this administrative regulation:
- (a) Initially: DMS anticipates that the amendment will be cost effective but due to the minimal level of telehealth care utilized for the past several years, a precise fiscal projection is difficult to attempt. Variables to consider include the number of providers who choose to refer recipients to telehealth specialists as well as the number of recipients who choose to receive telehealth care. DMS thinks

increased telehealth activity can reduce emergency room utilization or general practice/primary care center utilization as the use of specialists, via telehealth, would presumably result in quicker and more accurate diagnoses in some circumstances. Additionally, increased telehealth utilization may also decrease medical transportation costs.

- (b) On a continuing basis: DMS anticipates that the amendment will be cost effective but due to the minimal level of telehealth care utilized for the past several years, a precise fiscal projection is difficult to attempt. Variables to consider include the number of providers who choose to refer recipients to telehealth specialists as well as the number of recipients who choose to receive telehealth care. DMS thinks increased telehealth activity can reduce emergency room utilization or general practice/primary care center utilization as the use of specialists, via telehealth, would presumably result in quicker and more accurate diagnoses in some circumstances. Additionally, increased telehealth utilization may also decrease medical transportation costs.
- (6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under the Social Security Act, Title XIX and matching funds of general fund appropriations.
- (7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Neither an increase in fees nor funding will be necessary to implement this administrative regulation.
- (8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish or increase any fees.
- (9) Tiering: Is tiering applied? (Explain why tiering was or was not used)
The administrative regulation does establish a different service limit for certain mental health telehealth in order to preserve consistency with the same care in a face-to-face setting. For example, physicians and ARNPs are limited to four (4) services with a psychiatry CPT code per recipient per year pursuant to 907 KAR 3:005 (Physicians' services). Therefore, this administrative regulation imposes the same limit - four (4) mental health care encounters per recipient per year - if provided by a physician or ARNP via telehealth.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Reg NO: 907 KAR 3:170

Contact Person: Stuart Owen (502) 564-4321

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments or school districts)?

Yes X No

If yes, complete 2-4.

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Medicaid Services (DMS) will be impacted by the amendment.
3. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. This amendment is authorized by KRS 194A.010, 194A.030(2), 194A.125, 205.520, 205.559
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.
 - (a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amendment is not expected to generate revenue for the Department for Medicaid Services (DMS); however, could generate revenue for three local health departments which are in the Kentucky telehealth network (if they provide telehealth covered via this administrative regulation.)
 - (b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The amendment is not expected to generate revenue for the DMS; however, could generate revenue for three local health departments which are in the Kentucky telehealth network (if they provide telehealth covered via this administrative regulation.)
 - (c) How much will it cost to administer this program for the first year? DMS anticipates that the amendment will be cost effective but due to the minimal level of telehealth care utilized for the past several years, a precise fiscal projection is difficult to attempt. Variables to consider include the number of providers who choose to refer recipients to telehealth specialists as well as the number of recipients who choose to receive telehealth care. DMS thinks increased telehealth activity can reduce emergency room utilization or general

practice/primary care center utilization as the use of specialists, via telehealth, would presumably result in quicker and more accurate diagnoses in some circumstances. Additionally, increased telehealth utilization may also decrease medical transportation costs.

- (d) How much will it cost to administer this program for subsequent years? DMS anticipates that the amendment will be cost effective but due to the minimal level of telehealth care utilized for the past several years, a precise fiscal projection is difficult to attempt. Variables to consider include the number of providers who choose to refer recipients to telehealth specialists as well as the number of recipients who choose to receive telehealth care. DMS thinks increased telehealth activity can reduce emergency room utilization or general practice/primary care center utilization as the use of specialists, via telehealth, would presumably result in quicker and more accurate diagnoses in some circumstances. Additionally, increased telehealth utilization may also decrease medical transportation costs.